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No. 06-1104

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In The

Supreme Court of the United States

OLGA OSTOPOSIDES, et al.,

Petitioners,

v.

RICHARD GLIMP M.D. et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

OLGA OSTOPOSIDES, RENNA OSTOPOSIDES,
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The petitioners herein respectfully move this court for an order (1) vacating its denial of the petition for writ of certiorari, entered on April 16, 2007, and (2) granting the petition. As grounds for this motion, petitioners state the following.

INTRODUCTION

If a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. (Marbury v. Madison 5 U.S. 137; 178)

Hence, the decision to not grant certiorari review should be reconsidered by this United States Supreme Court as it allows the erroneous Ninth Circuit Court rulings to stand as law, which state, *"We know of no authority which even suggests that a plaintiff in a medical malpractice case is entitled to be represented by counsel,."* backed by the published Appellate Court opinions that state, *"As a general rule, there is no due process right to counsel in civil cases." (People v. $30,000 United States Currency (1995) Cal.App 4th 936, 942) (Iraheta v. Superior Court (1999) 70 Cal.App 4th 1500, 1503) (Fallis v. Dept. of Motor Vehicles (1960) 264 Cal.App. 2d 373, 383)*

These are rulings in opposition to the due process clause of the Fourteenth Amendment of the Constitution, and as

such, *"it is emphatically the providence and duty of the judicial department to say what the law is; courts are to decide which is the governing law if two laws conflict, and because the Constitution is superior...the Constitution...must govern the case to which they both apply" (Marbury, supra)*

REASONS FOR GRANTING REHEARING

I. The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

In the 3d vol. of his commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law. "In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." ... "It is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."

The *appellate court* perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

The conclusion from this reasoning is where a specific

duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for remedy.

If this be the rule, let us inquire how it applies to the case under the consideration of the court.

It cannot be presumed that any clause in the Constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

II. The question, whether an act, repugnant to the Constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the *appellate court* are defined, and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are

powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restricted? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.

It is a proposition too plain to be contested, that the Constitution controls any *appellate court ruling* repugnant to it; or, that the *appellate court* may alter the Constitution by an *appellate court ruling*.

Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary *appellate court rulings*, and, like other rulings, is alterable when the *appellate court* shall please to alter it.

If the former part of the alternative be true, then an *appellate court ruling* contrary to the Constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an *appellate court ruling*, repugnant to the Constitution, is void.

This theory is essentially attached to a written constitution, and is, consequently, to be considered by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the *appellate court*, repugnant to the Constitution, is void, does it, not withstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in

other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the providence and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two law conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the *appellate court*, the Constitution, and not such ordinary act, must govern the case to which they both apply.

Those who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to necessity of maintaining that the courts must close their eyes on the Constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that a *ruling*, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if an *appellate court ruling* shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the *appellate court* a practical and real omnipotence, with the same breath which professes to restrict their powers within

narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions -- a written constitution -- would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnishes additional arguments in favor of its rejection.

"No person," says the Constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the Constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the *appellate court* should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the *appellate court ruling*?

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.[1]

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[1] Marbury v. Madison 5 U.S. 137; 163 – 180. The phrase *legislative act* in this opinion has been substituted by the phrase *appellate court ruling* to emphasize the interchangeable meaning of this institution regarding this opinion, and puts the opinion directly on point with petitioners' case.

CONCLUSION

Hence, the denial of review by this United States Supreme Court is allowing the law by the Appellate Court that is repugnant to the Constitution and thus void, to stand, usurping the Constitution and its due process privileges of hearing a party by counsel to every Ninth Circuit civil litigant under its jurisdiction in this land. Therefore, in the "interest of justice" and for the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioners pray that this court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted, May 11, 2007

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CERTIFICATE OF COUNSEL

Petitioners hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Olga Ostoposides Petitioner in Pro Se	Renna Ostoposides Petitioner in Pro Se
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I am employed in the County of Los Angeles. State of California. I am over the age of 18 and not a party to the within action.

On May 11, 2007, I deposited into the United States mail service in Torrance, California three copies to each defendant and 40 copies to the United States Supreme Court.

PETITION FOR REHEARING

I declare under penalty of perjury of the laws of the State of California that the above is true and correct.

Executed May 11, 2007, at Los Angeles, California.

_____ _____

Type or Print Name Signature

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